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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GALE SOSTEK; and HERB SOSTEK

Plaintiffs,

VS.

COUNTY OF SAN BERNARDINO;
SAMUEL FULLER; and DOES 2-10,
inclusive.

Defendants.

Case No. 5:23-cv-2236 MRA (MRWx)

FIRST AMENDED COMPLAINT FOR DAMAGES

1. Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)
2. Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)
3. Substantive Due Process—(42 U.S.C. § 1983)
4. Battery (Survival and Wrongful Death)
5. Negligence (Survival and Wrongful Death)
6. Violation of Bane Act (Cal. Civil Code § 52.1)

DEMAND FOR JURY TRIAL

FIRST AMENDED COMPLAINT FOR DAMAGES

1. Plaintiffs GALE SOSTEK and HERB SOSTEK for their First Amended Complaint against Defendants COUNTY OF SAN BERNARDINO, SAMUEL FULLER and Does 2-10, inclusive, allege as follows:

INTRODUCTION

2. This civil rights action seeks compensatory and punitive damages from Defendants for violating various rights under the United States Constitution and state law in connection with the fatal police shooting of the decedent, Kyle Sostek.

PARTIES

3. At all relevant times, Kyle Sostek (“DECEDENT”) was an individual residing in County of San Bernardino, California.

4. Plaintiff GALE SOSTEK is an individual residing in Citrus County, Florida, and is the adopted mother of DECEDENT. GALE SOSTEK sues both in her individual capacity as the mother of DECEDENT and in a representative capacity as a successor-in-interest to DECEDENT. GALE SOSTEK seeks both survival damages, including pain and suffering and wrongful death damages under federal and state law.

5. Plaintiff HERB SOSTEK is an individual residing in Citrus County, Florida, and is the adopted father of DECEDENT. HERB SOSTEK sues both in his individual capacity as the father of DECEDENT and in a representative capacity as a successor-in-interest to DECEDENT. HERB SOSTEK seeks both survival damages, including DECEDENT's pain and suffering, and wrongful death damages under federal and state law.

6. At all relevant times, Defendant COUNTY OF SAN BERNARDINO (“COUNTY”) is and was a duly organized public entity, form unknown, existing under the laws of the State of California. At all relevant times, COUNTY was the employer of Defendant SAMUEL FULLER and DOES 2-4, who were COUNTY sheriff’s deputies, DOES 5-6, who were COUNTY sheriff’s deputies’ supervisorial officers, and DOES 7-10, who were managerial, supervisorial, and policymaking employees of the COUNTY Sheriff’s Department. On information and belief, at all relevant times, SAMUEL FUILLER and DOES 2-10 were residents of County of

1 San Bernardino, California. SAMUEL FUILLER and DOES 2-10 are sued in their
2 individual capacity for damages only.

3 7. At all relevant times, Defendants SAMUEL FUILLER and DOES 2-10
4 were duly authorized employees and agents of COUNTY, who were acting under
5 color of law within the course and scope of their respective duties as sheriff's
6 deputies and with the complete authority and ratification of their principal,
7 Defendant COUNTY.

8 8. At all relevant times, Defendants SAMUEL FUILLER and DOES 2-10
9 were duly appointed officers and/or employees or agents of COUNTY, subject to
10 oversight and supervision by COUNTY's elected and non-elected officials.

11 9. In doing the acts and failing and omitting to act as hereinafter described,
12 Defendants SAMUEL FUILLER and DOES 2-10 were acting on the implied and
13 actual permission and consent of COUNTY.

14 10. At all times mentioned herein, each and every COUNTY defendant was the
15 agent of each and every other COUNTY defendant and had the legal duty to
16 oversee and supervise the hiring, conduct and employment of each and every
17 COUNTY defendant.

18 11. The true names of defendants DOES 2 through 10, inclusive, are unknown
19 to Plaintiffs, who therefore sue these defendants by such fictitious names. Plaintiffs
20 will seek leave to amend this complaint to show the true names and capacities of
21 these defendants when they have been ascertained. Each of the fictitious named
22 defendants is responsible in some manner for the conduct and liabilities alleged
23 herein.

24 12. On September 11, 2023, Plaintiffs filed an amended claim for damages with
25 COUNTY pursuant to applicable sections of the California Government Code.

26 13. On October 23, 2023, COUNTY rejected Plaintiffs' claims for damages.

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JURISDICTION AND VENUE

2 14. This civil action is brought for the redress of alleged deprivations of
3 constitutional rights as protected by 42 U.S.C. §§ 1983, 1985, 1986, 1988, and the
4 Fourth and Fourteenth Amendments of the United States Constitution. Jurisdiction
5 is founded on 28 U.S.C. §§ 1331, 1343, and 1367.

6 15. Venue is proper in this Court under 28 U.S.C. § 1391(b), because
7 Defendants reside in, and all incidents, events, and occurrences giving rise to this
8 action occurred in, the County of San Bernardino, California.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

11 16. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
12 through 15 of this Complaint with the same force and effect as if fully set forth
13 herein.

14 17. On or about March 12, 2023, DECEDENT was on or near the 800 Block of
15 Vista Ave., in Sugarloaf (Unincorporated BigBear), California.

16 18. Near 800 block of Vista Ave., SAMUEL FUILLER discharged his firearm
17 at DECEDENT, striking him causing DECEDENT serious physical injury and
18 eventually killing him.

19 19. At the time of the shooting, DECEDENT was unarmed, and there were less
20 then lethal alternatives available to the involved deputies that were not exhausted
21 before resorting to using deadly force against DECEDENT. Further, DECEDENT
22 posed no imminent threat of death or serious physical injury to either SAMUEL
23 FUILLER, DOES 2-4 or any other person, especially since he was unarmed when
24 he was fatally shot. None of the involved deputies sustained substantial bodily
25 injury during this incident.

26 20. After shooting DECEDENT, SAMUEL FUILLER did not timely summons
27 medical attention for DECEDENT, who was bleeding profusely and had obvious
28 serious injuries.

FIRST CLAIM FOR RELIEF

Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)

(Against Defendants SAMUEL FUILLER and DOES 2-4)

21. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 20 of this Complaint with the same force and effect as if fully set forth herein.

22. SAMUEL FULLER's unjustified shooting deprived DECEDENT of his right to be secure in his persons against unreasonable searches and seizures as guaranteed to DECEDENT under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

23. The unreasonable use of force by Defendant SAMUEL FUILLER deprived the DECEDENT of his right to be secure in his person against unreasonable searches and seizures as guaranteed to DECEDENT under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

24. As a result, DECEDENT suffered extreme mental and physical pain and suffering, loss of enjoyment of life and eventually suffered a loss of life and of earning capacity. Plaintiffs have also been deprived of the life-long love, companionship, comfort, support, society, care, and sustenance of DECEDENT, and will continue to be so deprived for the remainder of their natural lives. Plaintiffs are also claiming funeral and burial expenses.

25. As a result of the conduct of SAMUEL FUILLER and DOES 2-4, they are liable for DECEDENT's injuries, either because they were integral participants in the excessive force, or because they failed to intervene to prevent these violations.

26. This use of deadly force was excessive and unreasonable under the circumstances, especially since DECEDENT was unarmed when he was fatally shot, DECEDENT had not caused anyone serious bodily injury and there were less then lethal alternatives to shooting DECEDENT which were not first used.

1 Defendants' actions thus deprived DECEDENT of his right to be free from
2 unreasonable searches and seizures under the Fourth Amendment and applied to
3 state actors by the Fourteenth Amendment.

4 27. The conduct of SAMUEL FUILLER was willful, wanton, malicious, and
5 done with reckless disregard for the rights and safety of DECEDEDENT and therefore
6 warrants the imposition of exemplary and punitive damages as to Defendant
7 SAMUEL FUILLER.

8 28. Plaintiffs bring this claim as successors-in-interest to the DECEDENT, and
9 seek both survival, including DECEDENT's pain and suffering and loss of
10 enjoyment of life and wrongful death damages for the violation of DECEDENT's
11 rights.

12 || 29. Plaintiffs also seek attorney fees under this claim.

SECOND CLAIM FOR RELIEF

14 | Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)

15 (Against Defendants SAMUEL FUILLER and DOES 2-4)

16 30. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
17 through 29 of this Complaint with the same force and effect as if fully set forth
18 herein.

19 31. The denial of medical care by Defendant SAMUEL FUILLER deprived
20 DECEDENT of his right to be secure in his person against unreasonable searches
21 and seizures as guaranteed to DECEDENT under the Fourth Amendment to the
22 United States Constitution and applied to state actors by the Fourteenth
23 Amendment.

24 32. As a result, DECEDENT suffered extreme mental and physical pain and
25 suffering and eventually suffered a loss of life and earning capacity. Plaintiffs have
26 also been deprived of the life-long love, companionship, comfort, support, society,
27 care, and sustenance of DECEDENT, and will continue to be so deprived for the

1 remainder of their natural lives. Plaintiffs are also claiming funeral and burial
2 expenses.

3 33. Defendant SAMUEL FUILLER knew that failure to provide timely medical
4 treatment to DECEDEDENT could result in further significant injury or the
5 unnecessary and wanton infliction of pain, but disregarded that serious medical
6 need, causing DECEDEDENT great bodily harm and death.

7 34. After shooting DECEDEDENT multiple times, SAMUEL FUILLER did not
8 timely summons medical attention for DECEDEDENT, who was bleeding profusely
9 and had obvious serious injuries, and SAMUEL FUILLER also did not allow and
10 prevented responding medical personnel on-scene to timely render medical
11 aid/assistance to DECEDEDENT.

12 35. The conduct of SAMUEL FUILLER was willful, wanton, malicious, and
13 done with reckless disregard for the rights and safety of DECEDEDENT and therefore
14 warrants the imposition of exemplary and punitive damages as to Defendant
15 SAMUEL FUILLER.

16 36. Plaintiffs bring this claim as a successors-in-interest to DECEDEDENT, and
17 seek both survival and wrongful death damages for the violation of DECEDEDENT's
18 rights.

19 37. Plaintiffs also seek attorney's fees under this claim.

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21 **THIRD CLAIM FOR RELIEF**

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Substantive Due Process (42 U.S.C. § 1983)

23

(Against Defendants SAMUEL FUILLER and DOES 2-4)

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38. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
25 through 37 of this Complaint with the same force and effect as if fully set forth
26 herein.

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39. GALE SOSTEK and had a cognizable interest under the Due Process
28 Clause of the Fourteenth Amendment of the United States Constitution to be free

1 from state actions that deprive her of life, liberty, or property in such a manner as to
2 shock the conscience, including but not limited to, unwarranted state interference in
3 Plaintiff's familial relationship with her son, DECEDEDENT.

4 40. HERB SOSTEK had a cognizable interest under the Due Process Clause of
5 the Fourteenth Amendment of the United States Constitution to be free from state
6 actions that deprive him of life, liberty, or property in such a manner as to shock the
7 conscience, including but not limited to, unwarranted state interference in
8 Plaintiff's familial relationship with his son, DECEDEDENT.

9 41. As a result of the excessive force by SAMUEL FUILLER, DECEDEDENT
10 died. Plaintiffs GALE and HERB SOSTEK were thereby deprived of their
11 constitutional right of familial relationship with DECEDEDENT.

12 42. SAMUEL FUILLER, acting under color of state law, thus violated the
13 Fourteenth Amendment rights of GALE and HERB SOSTEK to be free from
14 unwarranted interference with their familial relationship with DECEDEDENT.

15 43. The aforementioned actions of SAMUEL FUILLER, along with other
16 undiscovered conduct, shock the conscience, in that they acted with deliberate
17 indifference to the constitutional rights of DECEDEDENT and Plaintiffs GALE and
18 HERB SOSTEK and with purpose to harm unrelated to any legitimate law
19 enforcement objective.

20 44. Defendants SAMUEL FUILLER, acting under color of state law, thus
21 violated the Fourteenth Amendment rights of DECEDEDENT and Plaintiffs.

22 45. As a direct and proximate cause of the acts of SAMUEL FUILLER,
23 DECEDEDENT experienced severe pain and suffering and lost his life and earning
24 capacity. Plaintiffs suffered extreme and severe mental anguish and pain and have
25 been injured in mind and body. Plaintiffs has also been deprived of the life-long
26 love, companionship, comfort, support, society, care and sustenance of
27 DECEDEDENT, and will continue to be so deprived for the remainder of their natural
28 lives. Plaintiffs are also claiming funeral and burial expenses.

1 46. As a result of the conduct of SAMUEL FUILLER, he is liable for
2 DECEDENT'S injuries because he was an integral participant in the denial of due
3 process.

4 47. The conduct of SAMUEL FUILLER was willful, wanton, malicious, and
5 done with reckless disregard for the rights and safety of DECEDEDENT and Plaintiffs
6 and therefore warrants the imposition of exemplary and punitive damages as to
7 Defendant SAMUEL FUILLER.

8 48. Plaintiffs brings this claim individually and as a successors-in-interest to
9 DECEDENT, and seek both survival and wrongful death damages for the violation
10 of both Plaintiffs' and DECEDENT's rights.

11 || 49. Plaintiffs also seek attorney fees under this claim.

FOURTH CLAIM FOR RELIEF

Battery (Cal. Govt. Code § 820 and California Common Law)

(Wrongful Death)

(Against Defendant SAMUEL FUILLER, DOES 2-4 and COUNTY)

17 50. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
18 through 49 of this Complaint with the same force and effect as if fully set forth
19 herein.

20 51. SAMUEL FUILLER, while working as a sheriff's deputy for the COUNTY
21 Sheriff's Department, and acting within the course and scope of his duties,
22 intentionally shot DECEDENT. As a result of the actions of SAMUEL FUILLER,
23 DECEDENT suffered severe mental and physical pain and suffering, loss of
24 enjoyment of life and ultimately died from his injuries and lost earning capacity.
25 SAMUEL FUILLER had no legal justification for using force against DECEDENT
26 and said defendants' use of force while carrying out his officer duties was an
27 unreasonable use of force, especially since DECEDENT was unarmed when he was

1 fatally shot and he had not caused serious bodily injury to anyone, including the
2 involved deputies, prior to the shooting.

3 52. As a direct and proximate result of Defendant's conduct as alleged above,
4 Plaintiffs suffered extreme and severe mental anguish and pain and have been
5 injured in mind and body. Plaintiffs also have been deprived of the life-long love,
6 companionship, comfort, support, society, care and sustenance of DECEDENT, and
7 will continue to be so deprived for the remainder of their natural lives. Plaintiffs
8 also are claiming funeral and burial expenses.

9 53. COUNTY is vicariously liable for the wrongful acts of SAMUEL FUILLER
10 pursuant to section 815.2(a) of the California Government Code, which provides
11 that a public entity is liable for the injuries caused by its employees within the
12 scope of the employment if the employee's act would subject him or her to liability.

13 54. The conduct of SAMUEL FUILLER was malicious, wanton, oppressive,
14 and accomplished with a conscious disregard for the rights of Plaintiffs and
15 DECEDENT, entitling Plaintiffs, individually and as successors-in-interest to
16 DECEDENT, to an award of exemplary and punitive damages.

17 55. Plaintiffs bring this claim both individually and as a successors-in-interest to
18 DECEDENT, and seek both survival damages, including pain and suffering
19 damages and loss of enjoyment of life and wrongful death damages.

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FIFTH CLAIM FOR RELIEF

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Negligence (Cal. Govt. Code § 820 and California Common Law)

23

(Wrongful Death)

24

(Against All Defendants)

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56. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
26 through 55 of this Complaint with the same force and effect as if fully set forth
27 herein.

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57. The actions and inactions of the Defendants were negligent and reckless, including but not limited to:

- (a) the failure to properly and adequately train employees, including SAMUEL FUILLER, with regards to the use of force, including deadly force;
- (b) the failure to properly and adequately assess the need to detain, arrest, and use force, including deadly force against DECEDENT;
- (c) the negligent tactics and handling of the situation with DECEDENT, including pre-shooting negligence and dealing with individuals that suffer from mental illness;
- (d) the negligent detention, arrest, and use of force, including deadly force, against DECEDENT;
- (e) the negligent detention and arrest, including the initial vehicle stop of DECEDENT;
- (f) the failure to provide prompt medical care to DECEDENT;
- (g) the failure to properly train and supervise employees, both professional and non-professional, including SAMUEL FUILLER;
- (h) the failure to ensure that adequate numbers of employees with appropriate education and training were available to meet the needs of and protect the rights of DECEDENT; and
- (i) the negligent handling of evidence and witnesses.

58. As a direct and proximate result of defendants' conduct as alleged above, and other undiscovered negligent conduct, DECEDENT was caused to suffer severe pain and suffering and ultimately died and lost earning capacity. Also, as a direct and proximate result of defendants' conduct as alleged above, Plaintiffs suffered extreme and severe mental anguish and pain and have been injured in

1 mind and body. Plaintiffs also have been deprived of the life-long love,
2 companionship, comfort, support, society, care and sustenance of DECEDENT, and
3 will continue to be so deprived for the remainder of their natural lives. Plaintiffs
4 also are claiming funeral and burial expenses.

5 59. COUNTY is vicariously liable for the wrongful acts of SAMUEL FUILLER
6 pursuant to section 815.2 of the California Government Code, which provides that a
7 public entity is liable for the injuries caused by its employees within the scope of
8 the employment if the employee's act would subject him or her to liability.

9 60. Plaintiffs bring this claim as a successors-in-interest to DECEDENT, and
10 seek wrongful death damages.

11 **SIXTH CLAIM FOR RELIEF**

12 **Violation of Bane Act (Cal. Civil Code § 52.1)**

13 (Against All Defendants)

14 61. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
15 through 60 of this Complaint with the same force and effect as if fully set forth
16 herein.

17 62. California Civil Code, Section 52.1 (the Bane Act), prohibits any person
18 from interfering with another person's exercise or enjoyment of his constitutional
19 rights by threats, intimidation, or coercion.

20 63. Conduct that violates the Fourth Amendment violates the California Bane
21 Act.¹

22 64. Defendant SAMUEL FUILLER use of deadly force was excessive and
23 unreasonable under the circumstances, especially since DECEDENT was unarmed
24 and had not inflicted serious bodily injury on anyone, including the involved
25 deputies, during the incident. Further, there were less then lethal alternatives which

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1 were not first exhausted before resorting to the use of deadly force. Defendant's
 2 actions thus deprived DECEDEDENT of his right to be free from unreasonable
 3 searches and seizures under the Fourth Amendment and applied to state actors by
 4 the Fourteenth Amendment.

5 65. SAMUEL FUILLER intentionally used excessive deadly force against
 6 DECEDEDENT by recklessly disregarding the DECEDEDENT's right to be free from
 7 excessive force.

8 66. SAMUEL FUILLER, while working as sheriff's deputy for the COUNTY
 9 Sheriff's Department, and acting within the course and scope of his duties,
 10 interfered with or attempted to interfere with the rights of DECEDEDENT to be free
 11 from unreasonable searches and seizures, to equal protection of the laws, to access
 12 to the courts, and to be free from state actions that shock the conscience, by
 13 threatening or committing acts involving violence, threats, coercion, or
 14 intimidation.

15 67. On information and belief, DECEDEDENT reasonably believed that if he
 16 exercised his rights, including his civil rights, SAMUEL FUILLER would commit
 17 acts involving violence, threats, coercion, or intimidation against them or their
 18 property.

19 68. On information and belief Defendant SAMUEL FUILLER detained and
 20 injured DECEDEDENT to prevent him from exercising his rights or retaliated against
 21 DECEDEDENT for having exercised his rights.

22 69. DECEDEDENT was caused to suffer extreme mental and physical pain and
 23 suffering and eventually suffered a loss of life and of earning capacity. Plaintiffs
 24 have also been deprived of the life-long love, companionship, comfort, support,
 25 society, care, and sustenance of DECEDEDENT, and will continue to be so deprived

27 28 ¹ See *Chaudhry v. City of Los Angeles*, 2014 WL 2030195, at * 6 (9th Cir. May
 (footnote continued)

1 for the remainder of their natural lives. Plaintiffs are also claiming funeral and
2 burial expenses.

3 70. The conduct of SAMUEL FUILLER was a substantial factor in causing the
4 harms, losses, injuries, and damages of DECEDEDENT and Plaintiffs.

5 71. COUNTY is vicariously liable for the wrongful acts of SAMUEL
6 FUILLER pursuant to section 815.2(a) of the California Government Code, which
7 provides that a public entity is liable for the injuries caused by its employees within
8 the scope of the employment if the employee's act would subject him or her to
9 liability.

10 72. The conduct of SAMUEL FUILLER was malicious, wanton, oppressive,
11 and accomplished with a conscious disregard for the rights of DECEDEDENT
12 entitling Plaintiffs to an award of exemplary and punitive damages.

13 73. Plaintiffs bring this claim as successors-in-interest to the DECEDEDENT, and
14 seek both survival, including pain and suffering damages and loss of enjoyment of
15 life and wrongful death damages for the violation of DECEDEDENT's rights

16 74. The Plaintiffs also seek attorney fees under this claim.

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19, 2014) (citing *Cameron v. Craig*, 713 F.3d 1012, 1022 (9th Cir. 2013).

PRAYER FOR RELIEF

2 WHEREFORE, Plaintiffs request entry of judgment in their favor and against
3 Defendants County of San Bernardino, SAMUEL FUILLER and Does 2-10,
4 inclusive, as follows:

- A. For compensatory damages in excess of \$5,000,000, including both survival damages, including pain and suffering and loss of enjoyment of life and wrongful death damages under federal and state law, in the amount to be proven at trial;
- B. For funeral and burial expenses;
- C. For punitive damages against the individual defendants in an amount to be proven at trial;
- D. For interest;
- E. For reasonable costs of this suit and attorneys' fees; and
- F. For such further other relief as the Court may deem just, proper, and appropriate.
- G. For treble damages under Civil Code Section 52.1.

18 DATED: March 12, 2024

LAW OFFICES OF DALE K. GALIPO

By _____ /s/ Eric Valenzuela
Dale K. Galipo
Eric Valenzuela
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: March 12, 2024

LAW OFFICES OF DALE K. GALIPO

By /s/ Eric Valenzuela

Dale K. Galipo

Eric Valenzuela

Attorneys for Plaintiffs